IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 1011 of 2005

DATE OF DECISION: 5.7.2007

Narinder Singh

…Petitioner

Versus

Punjabi University, Patiala and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. S.D. Sharma, Senior Advocate, with
Ms. Bindu Goel, Advocate,
for the petitioner.

Mr. G.S. Ghuman, Advocate,
for respondent Nos. 2 and 3.

Mr. A.K. Walia, Advocate,
for respondent No. 4.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of directions to respondent Nos. 2 to 4 to vacate the posts of Security Guard, which have been illegally occupied by them. It has further been prayed that this Court may declare the appointments of respondent Nos. 2 to 4 as illegal because they failed to answer the qualification as per Advertisement No. 741, dated 19.8.2003 (P-1) for appointment to the post of Security Guard at the Punjabi University, Patiala-respondent No. 1 (for brevity, 'the

University'). The petitioner has also prayed that direction be issued to the University to appoint him as Security Guard.

Brief facts of the case are that the University advertised three posts of Security Guard in the category of Handicapped Person, vide Advertisement No. 741/PRO/Rect., dated 19.8.2003, in the pay scale of Rs. 2520-4140. The qualifications advertised were (a) that the candidate should have passed 8th Class with Punjabi as one of the subject; (b) that age of the candidate should be between 18-50 years on the date of publication of the advertisement; (c) that candidates were required to produce a medical certificate of 40% permanent/partial disability of upper or lower extremity and deformity but otherwise fit for employment against the post applied for. The medical certificate was required to be obtained from Class-I Medical Officer of Government Medical Institution or a Government Hospital. The candidates who were having less than 40% permanent/partial disability could have apply yet a certificate to the effect that such a candidate was otherwise fit for employment was required to be obtained and produced; and (d) the medical certificate was required to be obtained and produced from Class-I Medical Officer of any Government Medical Institution or Government Hospital or it could be obtained/produced from PMO/CMO/Civil Surgeon of the area where the candidate was permanently residing.

The petitioner claims that he fulfilled all the eligibility conditions and had applied for the post of Security Guard with all certificates before 10.9.2003. He was interviewed on 21.9.2004. Likewise, respondent Nos. 2 to 4, who had also applied were called for interview on 29.9.2004 although they were not eligible.

Respondent Nos. 2 to 4 were discharged Sepoys of the Army and none of them was handicapped nor they have arms license. It is alleged that they did not produce any experience certificate. Respondent Nos. 2 to 4 are the permanent residents of Patiala and they were required to obtain handicapped certificate from the PMO/CMO/Civil Surgeon, Patiala, but none of them obtained the certificates from the authorities aforementioned. On 20.10.2003, the University had sent to all the candidates a communication for production of certificates from the office of Civil Surgeon, who was to certify that they were fit to do the civil job. The certificate was required to be produced on or before 5.11.2003. The certificates could not be produced by respondent Nos. 2 to 4 till 5.11.2003, whereas the petitioner had produced his certificate of 10% handicapness along with fitness certificate. He had also produced his arms licence and fitness certificate from Civil Surgeon, Patiala, where he permanently reside. The petitioner was not selected whereas respondent Nos. 2 to 4 have been selected as Security Guards.

The stand taken by Shri Harchand Singh-respondent No. 2 in his written statement is that he had sent his application, which was duly forwarded to the competent authority (R-2/1) along with his certificate of 10th class (R-2/2 & R-2/3), a copy of the degree of Bachelor of Arts and detailed marks (R-2/4 and R-2/5) were also sent. It has further been claimed by respondent No. 2 that after having served in the army for 16 years, he was invalidated out from service under Category 'BEE (T)' with 30% disability, as is sought to be projected from a copy of the proceedings of the Invalidation Medical

Board along with opinion of the Specialist (R-2/6). Respondent No. 2 has also placed reliance on a certificate signed by the Medical Officer, Ex-Military Hospital, Patiala, regarding his medical category and fitness for the post of Security Guard (R-2/7). It is claimed that the selection and appointment of respondent No. 2 is based on merit and does not suffer from any legal infirmity.

In his separate written statement filed by respondent No. 4, it has been claimed that he is an Ex-serviceman and was discharged from the Army under Army Rule 13(3) as he was placed in the medical category lower than 'Shape-I'. He was not up to the prescribed military standards under Item III of the table annexed to Army Rule 13(3). He has claimed that he is an Ex-serviceman and handicapped person. The certificate with regard to disability of respondent No. 4 issued by the Army Authorities was also endorsed by the Civil Surgeon, Patiala and he has been certified to be handicapped person. He has also claimed that he was declared fit for civil employment.

In their separate written statement filed by the Acting Civil Surgeon, Patiala, on behalf of respondent Nos. 5 and 6, it has been asserted in para 7 that no certificate certifying the handicapped-ness of respondent No. 2-Shri Harchand Singh was ever issued by the office of the Civil Surgeon, Patiala. It has been clarified that respondent No. 2 had appeared in the office of the Civil Surgeon, Patiala, on 21.10.2004 with regard to medical examination for first entry into service in handicapped quota after having been selected as Security Guard in the University, vide letter No. 26161, dated 19.10.2004. He was referred to Professor, Head of Cardiology

Department, Rajindra Hospital, Patiala, for his examination and determination of percentage of disability. He, however, did not produce any report regarding disability before the Civil Surgeon and information in that respect was sent to the University vide letter No. 2226, dated 30.11.2004, with a copy to the Professor, Head of Cardiology Department, Rajindra Hospital, Patiala. A reminder was also sent to the University on 27.12.2004.

In respect of respondent No. 3-Shri Paramjit Singh, it has been asserted that the certificate dated 28.8.2003, certifying his handicapped-ness as 40% was issued on 28.8.2003 (R-1/T). Another certificate showing that he was medically fit on his first entry into service was issued to him by the Civil Surgeon on 8.11.2004 with the remarks that he was fit for civil job in handicapped quota.

In respect of respondent No. 4-Shri Jagmail Singh, it has also been asserted that no certificate certifying his handicapped-ness was ever issued by the Civil Surgeon, Patiala. It is claimed that a medical certificate regarding his first entry into service was issued to him on 26.10.2004 with the remarks that he was relieved by the army in GL 'BEE' permanent; a case of labile hypertension; fit with medication.

Mr. S.D. Sharma, learned senior counsel has argued that respondent Nos. 2 to 4 do not fulfill the essential qualification as per the requirement of the advertisement (P-1). He has drawn our attention to the advertisement dated 19.8.2003, to show that a handicapped candidate was to produce a medical certificate of 40% permanent/partial disability of upper or lower extremity, deformity but otherwise fit for employment against the post applied for from the

prescribed authority. In the case of Security Guard, candidates having less than 40% permanent/partial disability could also apply. The medical certificate regarding handicapped-ness could be produced after getting it issued from any Class-I Medical Officer of Government Medical Institution/Hospital or the PMO/CMO/Civil Surgeon of that place where the candidate is permanently resides. Learned counsel has maintained that paragraph 7 of the written statement filed by respondent Nos. 5 and 6 would show that no certificate of handicapped-ness was issued to respondent No. 2-Shri Harchand Singh, who had merely appeared in the office of the Civil Surgeon on 21.10.2004 with regard to his medical examination regarding first entry into service. Mr. Sharma, learned counsel has then referred to the facts in respect of respondent No. 3-Shri Paramjit Singh, who was issued a certificate of handicapped-ness (R-1/T) and also certificate of medical fitness regarding his first entry into service. It has further been pointed out that there is a candid assertion in respect of respondent No. 4-Shri Jagmail Singh, by the Civil Surgeon, who has stated that no certificate of handicapped-ness was issued to him.

Mr. G.S. Ghuman, learned counsel for respondent Nos. 2 and 3 and Mr. A.K. Walia, learned counsel for respondent No. 4, have argued that the persons who have been discharged from the army on account of lower medical category must be considered as handicapped. In that regard, learned counsel have drawn our attention to the certificate Annexure R-2/6, which shows that respondent No. 2 was placed in medical category 'BEE (T)'. a

reference has also been made to the summary and opinion of Lt. Col. Arun Tyagi and other certificates showing that respondent No. 2-Shri Harchand Singh was fit for civil employment for the post of Security Guard. However, both the learned counsel have not been able to answer the candid stand taken by respondent Nos. 5 and 6 in para 7 of the written statement nor any written statement has been filed by the University.

After hearing learned counsel for the parties, we are of the considered view that this petition deserves acceptance and the accordingly the selection and appointment of respondent Nos. 2 and 4 is liable to be set aside. According to the advertisement, three posts of Security Guard (Estate-2) were advertised to be filled from amongst the handicapped candidates. The opening portion of the advertisement along with Item 3 concerning Security Guard, issued on 19.8.2003 (P-1) reads as under:-

> "Advt. No. 741/PRO/Rect. 19 August, 2003
>
> Applications on prescribed form are invited from the Handicapped Candidates only for the following posts so as to reach the Deputy Registrar (Estt.) Punjabi University, Patiala-147002 by 10-9-2003.
>
> XXX XXX XXX XXX XXX
>
> XXX XXX XXX XXX
>
> 3. SECURITY GUARD-3 (Estate-2), (Museum & Art Galary-1) 2520-4140 interim salary Rs. 2620.
>
> Qualifications: Eighth class passed with Punjabi Subject. Age should be between 18-50 years. Ex-service men and

particularly those having own licensed arms will be given preference."

According to the Note of the advertisement, the following requirements were to be fulfilled:-

"Note:

1. Those persons who are suffering as per below will be considered as handicap.

Handicapped candidate should produce a Medical certificate of 40% permanent/partial disability of upper or lower extremity, deformity but otherwise fit for employment against the post applied for from the prescribed authority.

In the case of Security Guards candidates having less than 40% permanent/partial disability can also apply.

2. The Medical Certificate regarding handicapped-ness be produced after getting it issued from the below written persons mentioning therein that the applicant is fit for civil job.

(a) Any Class-I Medical Officer of Government Medical Institution/Hospital.

OR

(b) The place where the applicant permanently resides, the PMO/CMO/Civil Surgeon of that place or of that district. Application forms can be obtained from the Head Publication Bureau,

> Punjabi University, Patiala-147002 on payment of Rs. 100/- at the counter or by sending a demand draft in favour of the Registrar, Punjabi University, Patiala to Head Publication Bureau along with a self addressed envelop (25 x 10 cms) affixed with the postage stamps worth Rs. 15/- and indicating on it the name of the post applied for."

It is, thus, obvious that a candidate was required to be handicapped. The literary meaning of expression 'handicap' could only be one that is '*a physical or mental disability that results in partial or total inability to perform social, occupational or other normal day-to-day activities*'. It is evident from para 7 of the written statement filed by respondent Nos. 5 and 6 that respondent Nos. 2 and 4 have never obtained any certificate of handicapped-ness. One of the competent authority to issue certificate of handicapped-ness was PMO/CMO/Civil Surgeon of the place or the district where the candidate permanently resides. The University has also failed to file reply and the reply filed by respondent Nos. 2, 3 and 4 failed to disclose any certificate of handicapped-ness. They have attached discharge certificate from the Army certifying them to be person belonging to lower medical category and there is nothing on record to show that they suffer any physical or mental disability, which may bring them within the category of handicap person. However, in respect of respondent No. 3-Shri Paramjit Singh, certificate has been issued by the Civil Surgeon certifying that he is handicapped as he lost left eye leading to a permanent disability of 40% (R-1/T).

In view of the above, the selection and appointments of respondent Nos. 2 and 4 to the post of Security Guard in the handicapped category is hereby quashed. A direction is issued to the respondents to consider the case of the petitioner for appointment if he fulfills and answer all the qualifications as laid down in the advertisement. If the petitioner is not found fit then both the posts of Security Guard be re-advertised and filled up in accordance with law otherwise one remaining post may be filled up.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(ARVIND KUMAR)
JUDGE

July 5, 2007
Pkapoor